

Plan, reflecting the actions a contractor has agreed to take to mitigate a conflict, shall be incorporated into the contract.

(c) If the contracting officer determines, after consultation with agency legal counsel, that the otherwise successful offeror is unable to effectively mitigate an organizational conflict of interest, then the contracting officer, taking into account both the instant contract and longer term Government needs, shall use another approach to resolve the organizational conflict of interest, select another offeror, or request a waiver in accordance with FAR 9.503 (but *see* statutory prohibition in 209.571-7, which cannot be waived).

(d) For any acquisition that exceeds \$1 billion, the contracting officer shall brief the senior procurement executive before determining that an offeror's mitigation plan is unacceptable.

[75 FR 81913, Dec. 29, 2010]

**209.571-5 Lead system integrators.**

For limitations on contractors acting as lead systems integrators, *see* 209.570.

[75 FR 81913, Dec. 29, 2010]

**209.571-6 Identification of organizational conflicts of interest.**

When evaluating organizational conflicts of interest for major defense acquisition programs or pre-major defense acquisition programs, contracting officers shall consider—

(a) The ownership of business units performing systems engineering and technical assistance, professional services, or management support services to a major defense acquisition program or a pre-major defense acquisition program by a contractor who simultaneously owns a business unit competing (or potentially competing) to perform as—

(1) The prime contractor for the same major defense acquisition program; or

(2) The supplier of a major subsystem or component for the same major defense acquisition program.

(b) The proposed award of a major subsystem by a prime contractor to business units or other affiliates of the same parent corporate entity, particularly the award of a subcontract for software integration or the develop-

ment of a proprietary software system architecture; and

(c) The performance by, or assistance of, contractors in technical evaluation.

[75 FR 81913, Dec. 29, 2010]

**209.571-7 Systems engineering and technical assistance contracts.**

(a) Agencies shall obtain advice on systems architecture and systems engineering matters with respect to major defense acquisition programs or pre-major defense acquisition programs from Federally Funded Research and Development Centers or other sources independent of the major defense acquisition program contractor.

(b) *Limitation on Future Contracting.*

(1) Except as provided in paragraph (c) of this subsection, a contract for the performance of systems engineering and technical assistance for a major defense acquisition program or a pre-major defense acquisition program shall prohibit the contractor or any affiliate of the contractor from participating as a contractor or major subcontractor in the development or production of a weapon system under such program.

(2) The requirement in paragraph (b)(1) of this subsection cannot be waived.

(c) *Exception.* (1) The requirement in paragraph (b)(1) of this subsection does not apply if the head of the contracting activity determines that—

(i) An exception is necessary because DoD needs the domain experience and expertise of the highly qualified, apparently successful offeror; and

(ii) Based on the agreed-to resolution strategy, the apparently successful offeror will be able to provide objective and unbiased advice, as required by 209.571-3(a), without a limitation on future participation in development and production.

(2) The authority to make this determination cannot be delegated.

[75 FR 81913, Dec. 29, 2010]

**209.571-8 Solicitation provision and contract clause.**

(a) Use the provision at 252.209-7008, Notice of Prohibition Relating to Organizational Conflict of Interest—Major

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Defense Acquisition Program, if the solicitation includes the clause at 252.209-7009, Organizational Conflict of Interest—Major Defense Acquisition Program; and

(b) Use the clause at 252.209-7009, Organizational Conflict of Interest—Major Defense Acquisition Program, in solicitations and contracts for systems engineering and technical assistance for major defense acquisition programs or pre-major defense acquisition programs.

[75 FR 81913, Dec. 29, 2010]

## **PART 210—MARKET RESEARCH**

Sec.

210.001 Policy.

210.002 Procedures.

AUTHORITY: 41 U.S.C. 1303 and 48 CFR chapter 1.

SOURCE: 71 FR 53043, Sept. 8, 2006, unless otherwise noted.

### **210.001 Policy.**

(a) In addition to the requirements of FAR 10.001(a), agencies shall—

(i) Conduct market research appropriate to the circumstances before—

(A) Soliciting offers for acquisitions that could lead to a consolidation of contract requirements as defined in 207.170-2; or

(B) Issuing a solicitation with tiered evaluation of offers (Section 816 of Public Law 109-163); and

(ii) Use the results of market research to determine—

(A) Whether consolidation of contract requirements is necessary and justified in accordance with §207.170-3; or

(B) Whether the criteria in FAR part 19 are met for setting aside the acquisition for small business or, for a task or delivery order, whether there are a sufficient number of qualified small business concerns available to justify limiting competition under the terms of the contract. If the contracting officer cannot determine whether the criteria are met, the contracting officer shall include a written explanation in the contract file as to why such a determination could not be made (Section 816 of Public Law 109-163).

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(c)(2) In addition to the notification requirements at FAR 10.001(c)(2)(i) and (ii), see 205.205-70 for the bundling notification publication requirement.

[71 FR 53043, Sept. 8, 2006, as amended at 75 FR 40716, <July 13, 2010]

### **210.002 Procedures.**

When contracting for services, see the market research report guide for improving the tradecraft in services acquisition at PGI 210.070.

[77 FR 52253, Aug. 29, 2012]

## **PART 211—DESCRIBING AGENCY NEEDS**

Sec.

211.002 Policy.

211.002-70 Contract clause.

### **Subpart 211.1—Selecting and Developing Requirements Documents**

211.105 Items peculiar to one manufacturer.

211.106 Purchase descriptions for service contracts.

211.107 Solicitation provision.

211.170 Requiring the use of fire-resistant rayon fiber.

### **Subpart 211.2—Using and Maintaining Requirements Documents**

211.201 Identification and availability of specifications.

211.204 Solicitation provisions and contract clauses.

211.270 [Reserved]

211.271 Elimination of use of class I ozone-depleting substances.

211.272 Alternate preservation, packaging, and packing.

211.273 Substitutions for military or Federal specifications and standards.

211.273-1 Definition.

211.273-2 Policy.

211.273-3 Procedures.

211.273-4 Contract clause.

211.274 Item identification and valuation requirements.

211.274-1 General.

211.274-2 Policy for unique item identification.

211.274-3 Policy for valuation.

211.274-4 Policy for reporting of Government-furnished property.

211.274-5 Policy for assignment of Government-assigned serial numbers.

211.274-6 Contract clauses.

211.275 Passive radio frequency identification.

211.275-1 Definitions.